Court of Appeal no. 2 Civ. B 064243
L.A. Sup. Ct. no. C 682570

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**STATE OF CALIFORNIA**
**COURT OF APPEAL**
**SECOND APPELLATE DISTRICT**

GARY LEHTO,
Plaintiff and Respondent and Cross-Appellant,
versus
ALLSTATE INSURANCE COMPANY, et al.,
Defendant and Appellant and Cross-Respondent.

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Appeal from the Judgment of the Superior Court
County of Los Angeles
The Honorable Lillian M. Stevens

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# PETITION FOR REHEARING

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## III.

## AN ORDER FOR ENTRY OF JUDGMENT NOTWITHSTANDING THE VERDICT IS UNCONSTITUTIONAL

An order for judgment notwithstanding the verdict is a denial of the right to jury trial guaranteed by the California Constitution, Article I, section 16, and by the Constitution of the United States, Amendment 7. *Parsons v. Bedford,*, 28 U.S. (3 Pet.) 433, 446-447, 7 L.Ed. 732 (1830) (right to jury trial guaranteed as it existed at common law at the time constitution created); *Dorsey v. Barba*, 38 Cal.2d 350, 355, 240 P.2d 604, 607 (1952); *People v. Collins*, 17 Cal.3d 687, 692, 131 Cal.Rptr. 782, 785, *cert. denied*, *Collins v. California*, 429 U.S. 1077, 97 S.Ct. 820, 50 L.Ed.2d 796 (1976). Directed verdict, upon which an order for entry of judgment notwithstanding the verdict must be based, *C.C.P.* § 629, was unrecognized at common law. *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 33 S.Ct. 523, 57 L.Ed. 879 (1913). Additionally, the California Constitution, Article III, section 1, declares the federal constitution to be the supreme law, thus incorporating the latter's Seventh Amendment rights into Article I, section 16 of the California Constitution. An order for judgment notwithstanding the verdict of the jury also violates the due process and equal protection provisions of the federal and California Constitutions, and violates the privileges and immunities clause of the federal constitution.